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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 16 2005

at 1 o'clock and 30 min. 4M
WALTER A.Y.H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

In the Matter)	CIVIL NO. CV05-00017 HG LEK
)	(Admiralty)
of)	
)	ORDER DIRECTING ISSUANCE
The Complaint of CAPTAIN ANDY'S)	OF NOTICE, PUBLICATION
SAILING, INC., a Hawaii corporation,)	THEREOF AND RESTRAINING
as pro hac vice owner, and EVANS)	ORDER
PACIFIC, LTD., a Hawaii corporation,)	
as owner, of M/V SPIRIT OF KAUAI,)	
O.N. 995776, for exoneration from or)	
limitation of liability.)	
)	
)	

ORDER DIRECTING ISSUANCE OF NOTICE, PUBLICATION
THEREOF AND RESTRAINING ORDER

WHEREAS, a Complaint has been filed in this Court on January 10, 2005 by CAPTAIN ANDY'S SAILING, INC., as owner pro hac vice of the vessel M/V SPIRIT OF KAUAI, O.N. 995776, and EVANS PACIFIC, LTD., as owner of the vessel M/V SPIRIT OF KAUAI, O.N. 995776, seeking exoneration from or limitation of liability for any and all losses, injuries and damages occasioned or incurred by, or in any way consequent to, the incident off Makole Reef, Kauai, Hawaii, involving scuba divers and M/V SPIRIT OF KAUAI on July 20, 2004, and for certain other relief, and the Complaint having stated facts and circumstances upon which said exoneration and limitation is claimed, and it appearing that claims have been made, and that others may be made against the vessel M/V SPIRIT OF KAUAI and/or Limitation Plaintiffs in amounts which will exceed the value of Limitation Plaintiffs' interest in the said vessel M/V SPIRIT OF KAUAI for losses, injuries and damages said to have been occasioned by or incurred in consequence of the aforesaid incident;

WHEREAS, Limitation Plaintiffs, pursuant to Supplemental Rule F(1) of the Federal Rules of Civil Procedure, have filed an affidavit of value of said vessel M/V SPIRIT OF KAUAI and a Letter of Undertaking in the sum of

Four Hundred Thousand Dollars and Zero Cents (\$400,000.00), plus interest at a rate of six percent (6%) per annum, having been appropriately executed;

NOW, on application of Michael D. Formby, Esq., counsel for Limitation Plaintiffs, it is hereby;

ORDERED that the Clerk of this Court issue a notice forthwith in the form filed with the Court to all persons asserting claims with respect to which the Complaint seeking limitation, admonishing them to file their respective claims with the Clerk of this court and to serve attorneys for Limitation Plaintiffs a copy thereof on or before April 15, 2005; and it is further;

ORDERED that public notice shall be given by publication thereof in the newspaper known as *Honolulu Star Bulletin*, a newspaper with general circulation within the State of Hawaii, and that such notice shall be published once a week for four (4) successive weeks prior to the date fixed for the filing of claims; and it is further;

ORDERED that not later than the day of second publication, Limitation Plaintiffs shall also mail a copy of the notice to every person known to have made any claim against the vessel M/V SPIRIT OF KAUAI or against Limitation Plaintiffs arising out of the July 20, 2004 voyage on which the claims sought to be limited arose; and it is further;

ORDERED that the continued prosecution of any and all suits, actions and proceedings which may have already begun against the Limitation Plaintiffs in any Court whatsoever to recover damages arising out of, or occasioned by, or consequent upon, the aforesaid incident or otherwise arising during the July 20, 2004 voyage on which the vessel M/V SPIRIT OF KAUAI was then engaged and the institution and prosecution of any suits, actions or legal proceedings of any nature of description whatsoever in any Court whatsoever, except in this proceeding for exoneration from or limitation of liability, against Limitation Plaintiffs with respect to any claim or claims arising out of the aforesaid incident or otherwise arising during the July 20, 2004 voyage on which the vessel M/V SPIRIT OF KAUAI was then engaged, or otherwise subject to limitation in this proceeding, save and except Civil No. CV04-00570 ACK KSC, Dennis Claypool, et al. v. Capt. Andy's Sailing, Inc., et al., amended and filed in the U.S. District Court for the District of Hawaii on September 22, 2004 and Civil No. CV04-00559 ACK BMK, Matthew Isham, et al., v. Capt Andy's Sailing, Inc., et al., filed in the U.S. District Court for the District of Hawaii on September 14, 2004, all Plaintiffs in CV04-00570 ACK KSC and CV04-00559 ACK BMK having entered into a Stipulation Preserving Captain Andy's Sailing, Inc.'s Limitation Rights and Apportioning Agreed Limitation Fund filed in the U.S.

District Court for the District of Hawaii on January 20, 2005, shall cease, be and hereby are, stayed and restrained; and it is further;

ORDERED that the publication and mailing of copies of the notice to claimants, or their respective attorneys, as required by Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, shall constitute due notice to all persons asserting claims with respect to which said Complaint seeks limitation.

DATED: Honolulu, Hawaii, FEB 15 2005.

HELEN GILLMOR

UNITED STATES DISTRICT COURT JUDGE

In the Matter of The Complaint of CAPTAIN ANDY'S SAILING, INC., a Hawaii corporation, as pro hac vice owner, and EVANS PACIFIC, LTD., a Hawaii corporation, as owner, of M/V SPIRIT OF KAUAI, O.N. 995776, for Exoneration from or Limitation of Liability; ORDER DIRECTING ISSUANCE OF NOTICE, PUBLICATION THEREOF AND RESTRAINING ORDER; CV05-00017 HG LEK